

**SERVICE AGREEMENT BETWEEN CITY OF SUNNYVALE
AND ECONOLITE TRAFFIC ENGINEERING AND MAINTENANCE, INC., (TEAM
ECONOLITE) FOR TRAFFIC SIGNAL PREVENTIVE MAINTENANCE
AND REPAIR SERVICES**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and ECONOLITE TRAFFIC ENGINEERING AND MAINTENANCE, INC. (TEAM ECONOLITE), a California corporation ("CONTRACTOR").

WHEREAS, on March 17, 2005, CITY issued Request for Proposals #F0403-46 for Traffic Signal Preventive Maintenance and Repair Services; and

WHEREAS, CONTRACTOR has submitted a proposal in response to the Request for Proposals; and

WHEREAS, CITY has determined that CONTRACTOR's proposal offers the best value to CITY;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services

(a) There are attached and incorporated by this reference the following exhibits:

- (1) Exhibit "A", consisting of Pages 3 through 6, inclusive, and Attachments A through F, inclusive, of that certain document entitled "Request for Proposals #F0403-46" which was made available to all prospective proposers. The document consists of the Notice Inviting Proposals, Instructions to Proposers, Specifications, Terms and Conditions, and Instructions for Completion of Proposal Form, Attachment A - Detailed Specifications, Attachment B - List of Signalized Intersections, Attachment C - Monthly Preventive Maintenance Checklist, Attachment D - Annual Preventive Maintenance Checklist, Attachment E - Standard Operating Procedures (Bicycle and Pedestrian Safety, and Attachment F - City of Sunnyvale Traffic Signal Standards,
- (2) Exhibit "B", consisting of CONTRACTOR's proposal presenting the response to "Request for Proposals #F0403-46", as submitted to CITY by CONTRACTOR with the pertinent information provided by CONTRACTOR in response to the Request for Proposals. CONTRACTOR's proposal consists of a completed Proposal Form, Scope of Work, Key Personnel, Electronic Data Management and Inventory System, Qualifications, Wage and Benefit Package, and Vehicles/Equipment.

- (b) CONTRACTOR shall perform the services described in Pages 5 and 6, inclusive, of Exhibit "A" (III. Specifications) and in Attachments A through F, inclusive.
- (c) The performance of such services shall be governed by the terms and conditions set forth in this Agreement.

2. Time for Performance

The term of this Agreement shall be one year, beginning the date of Agreement execution, unless otherwise terminated. The Agreement may be extended up to four (4) additional one-year periods at the option of CITY. Should CITY decide to exercise its option to extend the Agreement, written notice shall be given CONTRACTOR at least sixty (60) days prior to the last day of each Agreement term.

Time is of the essence in the performance of the Agreement. If services cannot be performed at the specified time, the remedies set forth in Exhibit "A", Attachment A, Section B- Failure to Perform shall apply. Notwithstanding such remedies, if CONTRACTOR, for any reason whatsoever, fails to perform the services within the time specified, CITY may terminate the Agreement or any part thereof without liability except for services previously performed and accepted.

3. Indemnity

CONTRACTOR shall indemnify, defend and hold harmless CITY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of CITY.

4. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference and shall provide all certificates or endorsements as specified in Exhibit "C".

5. Performance Security

CONTRACTOR shall provide a performance bond acceptable to the City and issued by an admitted surety authorized to operate in the state of California as a condition of this Agreement. The amount of the performance bond shall be 100 percent of the total contract amount for preventive maintenance, which is One Hundred Sixty Nine Thousand Nine Hundred Eleven and no/100 Dollars (\$169,911.00). CONTRACTOR shall submit such bond within ten (10) calendar days from the date of CONTRACTOR's receipt of notice of contract award from CITY. The performance bond shall cover the preventive maintenance of this Agreement and shall be required and in effect for the first year of the Agreement and for the second year if the Agreement is extended.

6. Duties of CITY

CITY shall supply any documents or information available to CITY required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

7. Compensation

CITY agrees to pay CONTRACTOR as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in CONTRACTOR's completed Proposal Form included in Exhibit "B" through the end of the original contract period.

Thereafter, if the Agreement is extended, CONTRACTOR may request an increase in the labor and equipment rates set forth in Exhibit "B" comparable to any increase in the Consumer Price Index (CPI) for the San Francisco Bay Area Consolidated Metropolitan Statistical Area (San Francisco-Oakland-San Jose) as compiled by the Bureau of Labor Statistics or five percent (5%), whichever is less. Such a request shall be made in writing no more frequently than annually and, if approved by CITY, shall take effect on the contract anniversary date following CITY's receipt of the request.

8. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

9. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

10. Compliance with Laws

- (a) CONTRACTOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

11. Independent Contractor

CONTRACTOR is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the

relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

12. CITY Representative

Dennis Ng, Senior Engineer Public Works/Transportation and Traffic, as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONTRACTOR Representative

James Dahl, Regional Manager, shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

14. Notices

All notices required by the Agreement shall be in writing, and shall be personally delivered or sent by first class mail, postage prepaid or by commercial courier, addressed as follows:

To CITY: Dennis Ng, Senior Engineer
Public Works, Division of Transportation and Traffic
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: James Dahl, Regional Manager
TEAM ECONOLITE
3400 De La Cruz Blvd., Unit G
Santa Clara CA 95054

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

TEAM ECONOLITE ("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

